

1 your first witness?

2 MR. HOLT: Your Honor, before we present the
3 witnesses I would just like to ask that a ruling be had on the
4 sequestration issue.

5 JUDGE CHACHKIN: You want all the witnesses who are
6 not testifying be sequestered from the room?

7 MR. HOLT: Correct, Your Honor.

8 JUDGE CHACHKIN: Yes That is an order and your
9 request will be granted. So do we come to the point now of
10 calling the first witness?

11 MR. BECHTEL: I would call Mr. Berfield.

12 Whereupon,

13 MORTON L. BERFIELD

14 was called as a witness and, after having first been duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BECHTEL:

18 Q Would you state for the record your name and office
19 address?

20 A Morton L. Berfield, office is at 1129 20th Street,
21 N.W., Washington, D.C. 20036.

22 Q And are you the Morton L. Berfield referred to in
23 Glendale Exhibit 224?

24 A I am.

25 MR. BECHTEL: The witness is available for cross-

1 examination.

2 JUDGE CHACHKIN: Mr. Holt or Mr. Topel?

3 MR. HOLT: Yes, Your Honor. I'll be conducting the
4 examination. Before we begin I'd just like to make sure that
5 you have all the materials he may need during my examination
6 before you so we can refer to them. They'll consist of both
7 volumes of the hearing testimony that's been exchanged. In
8 this case I see you have one volume before you. Is that a
9 fact?

10 MR. BERFIELD: Yes. I have before me just my
11 testimony.

12 MR. HOLT: Okay. You may need to refer from time to
13 time to the other volume which contains the documents --

14 JUDGE CHACHKIN: Do you want to give him a copy of
15 your -- well, your exhibit hasn't been marked yet.

16 MR. HOLT: Right. I will give him a copy of my
17 exhibit, Your Honor.

18 JUDGE CHACHKIN: Well, maybe we do that it might be
19 useful to have the documents marked since they're going to be
20 referred to. Why don't we do that? We're not offering them
21 at this time, just going to have them marked, what he referred
22 to. Why don't you go through your documents?

23 MR. HOLT: I guess that raises a question, Your
24 Honor, as to how you'd like to handle this.

25 JUDGE CHACHKIN: Well, I'm saying just identify

1 | them, not offer them at this time.

2 | MR. HOLT: Okay.

3 | JUDGE CHACHKIN: Just mark so when you refer the
4 | witness to a document you'll be able to refer them by the, the
5 | number.

6 | MR. HOLT: Yes, Your Honor. Thank you. We would
7 | request that -- be marked for identification a two page
8 | document. It appears to be a handwritten letter on a
9 | handwritten letterhead of Dennis Grolman. I'd like to ask
10 | that that be marked for identification as TBF Exhibit 221.

11 | JUDGE CHACHKIN: The document will be so marked.

12 | MR. TOPEL 71.

13 | MR. HOLT: 271.

14 | JUDGE CHACHKIN: 271.

15 | (The document that was referred to as
16 | TBF Exhibit No. 271 was marked for
17 | identification.)

18 | MR. HOLT: And we would ask that you mark for
19 | identification as TBF 272, a three page document, again
20 | appearing to be a handwritten letter written by Dennis Grolman
21 | dated October 10, 1991.

22 | JUDGE CHACHKIN: The document will be so marked.

23 | (The document that was referred to as
24 | TBF Exhibit No. 272 was marked for
25 | identification.)

1 MR. HOLT: And that you mark for identification as
2 TBF 273 a one page document dated 10/17/91.

3 JUDGE CHACHKIN: And that's a list of expenses --

4 MR. HOLT: Correct.

5 JUDGE CHACHKIN: That document will be marked for
6 identification as Trinity Exhibit 273.

7 (The document that was referred to as
8 TBF Exhibit No. 273 was marked for
9 identification.)

10 MR. HOLT: And we request that you mark for
11 identification as TBF 274 a five page document consisting of a
12 letter on the letterhead of Arent, Fox, Kinter, Plotkin and
13 Kahn dated November 11, 1991 and an attached document entitled
14 Agreement.

15 JUDGE CHACHKIN: That document will be so marked.

16 (The document that was referred to as
17 TBF Exhibit No. 274 was marked for
18 identification.)

19 MR. HOLT: And we would ask that you mark as TBF
20 Exhibit 275 for identification a six page document consisting
21 of a two page letter on the letterhead of Arent, Fox, Kinter,
22 Plotkin and Kahn dated December 12, 1991 and an attached
23 Agreement.

24 JUDGE CHACHKIN: The document will be so marked.

25 (The document that was referred to as

1 TBF Exhibit No. 275 was marked for
2 identification.)

3 MR. HOLT: I would request that you mark as TBF
4 Exhibit 275 for identification a two page document --

5 JUDGE CHACHKIN: You're talking about 276.

6 MR. HOLT: I'm sorry, 276, a two page document
7 consisting of a letter on the letterhead of Cohen & Berfield,
8 P.C. dated 12/13/91 and an attached certification of expenses.

9 JUDGE CHACHKIN: The document described will be so
10 marked.

11 (The document that was referred to as
12 TBF Exhibit No. 276 was marked for
13 identification.)

14 MR. HOLT: I'd request that you mark for
15 identification as TBF 277 a two page document consisting of
16 two versions of a invoice dated March 31, 1989 on the
17 letterhead of R. L. Hoover.

18 JUDGE CHACHKIN: The document will be so marked.

19 (The document that was referred to as
20 TBF Exhibit No. 277 was marked for
21 identification.)

22 MR. HOLT: I'd request that you mark for
23 identification as TBF Exhibit 278 a one page document
24 consisting of a -- what appears to be a check signed by David
25 A. Gardner dated May 9, 1989.

1 JUDGE CHACHKIN: The document is so marked.

2 (The document that was referred to as
3 TBF Exhibit No. 278 was marked for
4 identification.)

5 MR. HOLT: Request that you mark for identification
6 as TBF Exhibit 279 a one page document entitled "Aid to
7 Understanding Anticipated Testimony of Mr. Berfield at
8 Deposition on March 25th Relative to Reconstruction of
9 Allocation and Itemization of Legal Expenses" prepared by Gene
10 Bechtel."

11 JUDGE CHACHKIN: The document will be so marked.
12 (The document that was referred to as
13 TBF Exhibit No. 279 was marked for
14 identification.)

15 MR. HOLT: I'd like to request that you mark for
16 identification as TBF Exhibit 280 a one page document dated
17 March 13, 1989 which appears to be an invoice on the
18 letterhead of Cohen & Berfield.

19 JUDGE CHACHKIN: The document is so marked.
20 (The document that was referred to as
21 TBF Exhibit No. 280 was marked for
22 identification.)

23 MR. HOLT: I'd like to request that you mark for
24 identification as TBF Exhibit 281 a one page document which
25 appears to be an invoice on the letterhead of Cohen & Berfield

1 dated April 4, 1990.

2 JUDGE CHACHKIN: The document is so marked.

3 (The document that was referred to as
4 TBF Exhibit No. 281 was marked for
5 identification.)

6 MR. HOLT: I'd like to request that you mark for
7 identification as TBF Exhibit 282 a one page document dated
8 June 4, 1990 which also appears to be an invoice on the
9 letterhead of Cohen & Berfield.

10 JUDGE CHACHKIN: The document is so marked.

11 (The document that was referred to as
12 TBF Exhibit No. 282 was marked for
13 identification.)

14 MR. HOLT: I'd like to request that you mark for
15 identification as TBF Exhibit 283 a one page document which
16 appears to be a check drawn on the account of Adwave Company
17 dated May 3, 1990.

18 JUDGE CHACHKIN: Is it May 3rd or May 31st?

19 MR. HOLT: I'm sorry, May 31, 1990.

20 JUDGE CHACHKIN: The document is so marked.

21 (The document that was referred to as
22 TBF Exhibit No. 283 was marked for
23 identification.)

24 MR. HOLT: I'd like to request that you mark for
25 identification as TBF Exhibit 284 a two page document dated --

1 which appears to be a invoice on the letterhead of Cohen &
2 Berfield dated June 4, 1990.

3 JUDGE CHACHKIN: The document will be so marked.
4 (The document that was referred to as
5 TBF Exhibit No. 284 was marked for
6 identification.)

7 MR. HOLT: Request that you mark for identification
8 as TBF Exhibit 285 a one page document dated August 7, 1990
9 which also appears to be an invoice on the letterhead of Cohen
10 & Berfield.

11 JUDGE CHACHKIN: The document will be so marked.
12 (The document that was referred to as
13 TBF Exhibit No. 285 was marked for
14 identification.)

15 MR. HOLT: I'd like to request that you mark for
16 identification as TBF Exhibit 286 a one page document dated
17 November 9, 1990 which appears to be an invoice on the
18 letterhead of Cohen & Berfield.

19 JUDGE CHACHKIN: The document will be so marked.
20 (The document that was referred to as
21 TBF Exhibit No. 286 was marked for
22 identification.)

23 MR. HOLT: I'd like to request that you mark for
24 identification as TBF Exhibit 287 a one page document dated
25 May 6, 1991 which appears to be an invoice on the letterhead

1 of Cohen & Berfield.

2 JUDGE CHACHKIN: The document will be so marked.

3 (The document that was referred to as
4 TBF Exhibit No. 287 was marked for
5 identification.)

6 MR. HOLT: I'd like to request that you mark for
7 identification as TBF Exhibit 288 a one page document dated
8 June 5, 1991 which appears to be an invoice on the letterhead
9 of Cohen & Berfield.

10 JUDGE CHACHKIN: The document is so marked.

11 (The document that was referred to as
12 TBF Exhibit No. 288 was marked for
13 identification.)

14 MR. HOLT: I'd like to request that you mark for
15 identification as TBF Exhibit 289 a two page document, both of
16 which are dated November 5, 1991 which appear to be invoices
17 on the letterhead of Cohen & Berfield.

18 JUDGE CHACHKIN: The document is so marked.

19 (The document that was referred to as
20 TBF Exhibit No. 289 was marked for
21 identification.)

22 MR. HOLT: I'd like to request that you mark for
23 identification as TBF Exhibit 290 a one page document which
24 appears to be an authorization by the Commission granting
25 Raystay's application to transfer its construction permit to

1 Grosat Broadcasting, Inc.

2 JUDGE CHACHKIN: And that's dated March 2, 1992.

3 MR. HOLT: Correct, Your Honor.

4 JUDGE CHACHKIN: The document is so marked.

5 (The document that was referred to as
6 TBF Exhibit No. 290 was marked for
7 identification.)

8 JUDGE CHACHKIN: All right, Mr. Holt. Do you want
9 Mr. Berfield to have the Bureau documents also?

10 MR. HOLT: Yes, Your Honor. Your Honor, it also may
11 be necessary to refer to exhibits that were received into
12 evidence during the last stage of the proceeding so I would
13 provide him with copies of, of these exhibits, as well.

14 JUDGE CHACHKIN: Okay.

15 MR. HOLT: And if Your Honor doesn't have a copy I
16 have a copy.

17 JUDGE CHACHKIN: I don't, I don't have a copy.

18 MR. HOLT: These are blank copies. These were used
19 by -- during the hearing and may bear notations, but they
20 don't --

21 JUDGE CHACHKIN: Let's go off the record.

22 (Off the record. Back on the record.)

23 CROSS-EXAMINATION

24 BY MR. HOLT:

25 Q Mr. Berfield, Raystay's low power television

1 applications were filed on March 9, 1989. During the period
2 before those applications were filed David Gardner told you
3 that Raystay would be filing for five low power television
4 station applications? Correct?

5 A Correct.

6 Q And you gave him a range of \$5,000 to \$6,000 for
7 legal fees that would be incurred on that project? Isn't that
8 right?

9 A Correct.

10 Q And since you gave him a fee range of \$5,000 to
11 \$6,000 I take it you didn't tell him that his -- that your
12 fees for the project would be \$4,000 for the first application
13 and \$300 for each additional application, did you?

14 A I don't recall that I broke it down with Mr. Gardner
15 or not. I do recall the fee range of \$5,000 to \$6,000.

16 Q You don't have any notes or other documents that
17 reflect that estimate, do you?

18 A No, sir. That estimate was given orally to Mr.
19 Gardner.

20 Q And you didn't create any at the time that you gave
21 that estimate? Isn't that right?

22 A That's correct.

23 Q And at the time you prepared the -- your invoice for
24 legal services, for the services you provided in preparing
25 those applications, you didn't recall what estimate you had

1 given to Mr. Gardner? Isn't that so?

2 A I'm sorry. What was your question?

3 Q At the time that you prepared the -- your legal
4 invoice, which I believe has been marked for identification as
5 TBF Exhibit 280, an invoice dated March 13, 1989, you didn't
6 recall what estimate you had given Mr. Gardner for your
7 services? Isn't that so?

8 A No. I'm sure when I prepared the bill I had in mind
9 the estimate.

10 Q Are you saying that you recalled at that time what
11 estimate you had given Mr. Gardner?

12 A Well, I, I recall that I gave him an estimate of
13 \$5,000 to \$6,000 in the month preceding the March 13, 1989
14 bill.

15 Q Now, isn't it true that during the years 1989
16 through 1991 it was your firm's practice to charge a flat fee
17 for applications that were prepared by you or Mr. Cohen?

18 A I --

19 Q Yes or no, sir.

20 A Not invariably, no. Do you mean by a flat fee you
21 mean a precise dollar amount?

22 Q Well, was it -- it was a practice of your firm to
23 charge a flat fee for the services that you or Mr. Cohen
24 rendered? Isn't that right?

25 A In --

1 Q For -- in preparing applications.

2 A It's generally our, our practice to either give a
3 set fee or to give a range of fees such as I gave in Raystay
4 of the \$5,000 to \$6,000 for an application.

5 Q I want to direct your attention to this March 13,
6 1989 invoice. It makes reference to Greg Daly. Do you
7 recognize that name?

8 A I do.

9 Q Can you identify that individual?

10 A Greg Daly has a company called Telsa and he finds
11 transmitter sites for applicants.

12 Q And he was the person who located the sites for the
13 Lebanon and Lancaster applications? Correct?

14 A Correct.

15 Q And Raystay owned the site of the Red Line station,
16 didn't it?

17 A That's correct.

18 Q And so Daly provided no service in connection with
19 that station, did he?

20 A Not with Red Lion, correct.

21 Q I'd like to focus you on the period between the time
22 of your November 7th letter, November 7, 1991, and the time
23 that you left for vacation on December 20, 1991. Do you have
24 that period of time in your mind?

25 A Yes, sir.

1 Q Now, during that period you were advised by David
2 Gardner that the Red Lion permit was going to be sold for
3 \$10,000? Correct?

4 A Yes.

5 Q And to the best of your recollection that was in the
6 first day of December -- the first ten days of December?
7 Isn't that right?

8 A I think it was either late November or the first
9 part of December, maybe the first ten days of December, yes.
10 That's my best recollection.

11 Q At that time David Gardner asked you to provide
12 expense information for submission to the FCC in connection
13 with the sale of the Red Lion permit? Correct?

14 A Well, David Gardner called me and told me the Red
15 Lion application -- they had a proposal to sell it for \$10,000
16 and he asked me to -- whether that would be justified under
17 the FCC's rules on expenses and to provide the information and
18 advice which he in then turn would submit to the buyer's
19 attorney who was going to prepare the application.

20 Q And that request for you to provide him with that
21 information was made in the same conversation in which you
22 learned of the \$10,000 sale price? Isn't that right?

23 A Yes.

24 Q Now, after the conversation you referred back to
25 your letter of November 7, 1991 to calculate how much could be

1 contributed -- attributed to the Red Lion permit? Correct?

2 A Yes. That was my point of departure in the
3 analysis.

4 Q And I take it that you didn't review any legal
5 invoices or time diaries at that time to determine if any of
6 the fees or expenses specified in that letter to be
7 specifically attributed to the Red Lion permit? Am I right?

8 A No. I think I, I think I reviewed the invoices on
9 which the November 7, 1991 letter had been written.

10 Q You went back to those invoices --

11 A Well, I went back to see, went back to see if we had
12 broken out in the invoices by application or by permit any of
13 the services.

14 Q And did you see that you had broken out in the
15 invoices anything by application?

16 A I think there was just one last invoice that
17 specifically referenced Red Lion. All the application work
18 and the amendments of the application, getting the
19 applications through the Commission, are billed -- just
20 reference the, the permits in the aggregate.

21 Q Did you refer to any of the time records to
22 determine whether they made reference to any one of the
23 specific low power construction permits?

24 A I think perhaps I did review what time sheets we had
25 on it, yes.

1 Q And by time sheet we're referring to time records
2 that were maintained by Mr. Schauble and Mr. Boyce in that
3 period of time? Correct?

4 A Yes, primarily.

5 Q During that review did you determine whether any of
6 the fees were not attributable to the Red Lion construction
7 permit?

8 A Well, yes. We had, we had -- in my November 7th
9 letter it indicated we had fees in the aggregate of something
10 like \$15,397, whatever the figure is in my November 7th
11 letter, and it was, it was then a question of, of
12 apportionment or of allocation to the Red Lion permit which
13 was the only permit being sold at that time.

14 Q My question is during your review of the invoices
15 and other documentation that you reviewed did you make any
16 determination as to whether any of the services reflected in
17 those materials could not be attributed to the Red Lion permit
18 which would, which would necessarily cause those services to
19 be deducted from your allocation?

20 A Yes, yes. In the initial, the initial filing of the
21 five applications I determined that of the \$5,200 that \$1,200
22 would not have been a Red Lion expense, and then in the
23 subsequent amendments they were virtually identical, all the
24 amendments and the operational compliance work and all the
25 other work that went into the \$15,000+ figure the services

1 | were virtually identical, so it was a matter of determining a
2 | percentage which I thought was fair and reasonable and
3 | conservative which was 50 percent, so by definition the other
4 | 50 percent was left available for future use.

5 | Q I'd like to direct your attention to your letter of
6 | November 7, 1991. I believe it's been marked for -- it's
7 | actually been received into evidence in the early phase of the
8 | proceeding, TBF Exhibit 232. Do you have a copy of that
9 | letter before you, sir?

10 | A I do. Thank you.

11 | Q At the time of -- at the time that you prepared this
12 | letter you were -- or at the time you made the Red Lion
13 | allocated, which was after your preparation of this letter,
14 | you were aware of a FCC case called Integrated Communication
15 | Systems, Inc. of Massachusetts, were you not?

16 | A Yes.

17 | Q And you found that case while you were researching
18 | to determine whether there was any Commission authority
19 | bearing on the subject of making an allocation among multiple
20 | construction permits? Correct?

21 | A Yes.

22 | Q Were you assisted by anyone during your -- while you
23 | were conducting that research?

24 | A No.

25 | Q On the integrated case the applicant was seeking to

1 | dismiss one of its three pending FCC applications in exchange
2 | for payment of its expenses? Isn't that right?

3 | A Yes.

4 | Q And the applicant in the integrated case made a pro
5 | rata allocation of fees and expenses among its three
6 | applications to arrive at the figures specified in its, in its
7 | expense certification filed in that case, did it not?

8 | A It did.

9 | Q And that pro rata allocation was approved by the
10 | Review Board? Correct?

11 | A Yes.

12 | Q But the Review Board disapproved the applicant's
13 | effort to seek reimbursement for certain expenses that had
14 | been charged to it by the parent corporation for services
15 | performed by that entity? Right?

16 | A Yes, I believe that's correct.

17 | Q And your assessment of that finding is reflected in
18 | the third paragraph of November -- your November 7th letter,
19 | 1991, isn't it?

20 | A Yes, in part, uh-huh.

21 | Q During the course of your legal research did you
22 | find any precedent where the Commission had approved anything
23 | other than a pro rata allocation of expenses among
24 | applications?

25 | A No. The only case --

1 Q That suffices.

2 JUDGE CHACHKIN: Well, I'll permit you to --

3 WITNESS: May I?

4 JUDGE CHACHKIN: Go ahead.

5 WITNESS: May I just speak?

6 JUDGE CHACHKIN: Go ahead, yes. I've permitted you
7 to finish your response.

8 WITNESS: I said no, and I would point out with
9 respect to the integrated case those are the 301 applications
10 which are customized applications with program percentages and
11 special showings of financial qualifications and quite
12 different than the applications here. So in my judgment the
13 fact that did one-third, one-third, one-third and integrated
14 with 301 is not really on -- in line with the facts here. I
15 thought your main principal of integrated was that the Review
16 Board gave credit to the lawyer's apportionment, the good
17 faith apportionment, and that's what I made here.

18 BY MR. HOLT:

19 Q But you were aware at that time, were you not, that
20 the legal expenses were totalled in the integrated case and
21 were divided by one-third on a pro rata basis?

22 A Yes, but, as I said, those are the 301 applications
23 and, in fact, the integrated itself that was settled was in a
24 hearing case. It wasn't clear from my reading exactly what
25 was in, what was out.

1 Q The integrated case was the only case you found on
2 the subject, wasn't it?

3 A I believe it was.

4 Q Now, if you had divided the legal and engineering
5 expenses for Raystay's five CPs on a pro rata basis you
6 wouldn't have gotten to the \$10,000 sales price that Grolman
7 had offered for the construction permit? Isn't that right?

8 A You mean a pro -- you mean one-fifth, one-fifth,
9 one-fifth --

10 Q Right.

11 A -- for legal and engineering? No. It would have
12 been short.

13 Q And, in fact, you would have arrived at an expense
14 figure for the Red Lion CP that was approximately \$5,000 less
15 than the \$10,000 that Grolman had agreed to pay? Isn't that
16 correct?

17 A I don't know what the mathematics would be.

18 Q Now, at the time you provided the Red Lion figures
19 to David Gardner did you and he discuss the integrated case?

20 A No. When I gave the figures to Mr. Gardner it was a
21 short conversation. I, I told him that I thought he could
22 take one-third of the engineering and one-half of the legal
23 fees and the filing fees. I gave him the numbers and I told
24 him briefly what my theory was. I don't think I mentioned the
25 case to him. He's not a lawyer.

1 Q Did you discuss the subject of whether or not the
2 expenses should be allocated by one-fifth instead of one-
3 third?

4 A No. I gave him my -- he had asked my opinion and my
5 advice and I provided it.

6 Q Did you discuss that subject with -- the subject of
7 allocating any of Raystay's expenses by one-fifth as opposed
8 to one-third with anyone at Raystay during that period of
9 time?

10 A Not that I recall.

11 Q Did you discuss that subject with anyone at Cohen &
12 Berfield during that period of time?

13 A I don't believe so.

14 Q Now, it's true, is it not, that the applicant in the
15 integrated case disclosed to the Commission the fact that it
16 had made an application among several different construction
17 permits to arrive at the figures for which it was seeking
18 reimbursement?

19 A Yes.

20 Q And I take it you didn't advise anyone at Raystay
21 before you left on your vacation that a disclosure should be
22 made to the Commission that -- as to how you had arrived at
23 the Red Lion expense figures? Isn't that correct?

24 A Well, I had given to Mr. David Gardner briefly my,
25 my theory and I had given him the numbers and it was my

1 understanding that Arent, Fox was preparing the application
2 and I, I didn't know exactly what form or format Arent, Fox
3 would use.

4 Q But I take it that you didn't advise David that a
5 disclosure should be made that an allocation of --

6 A I did not.

7 Q -- of one-fifth --

8 A I did not. I'm sorry. What --

9 Q That an allocation --- that you hadn't made a pro
10 rata allocation?

11 A No, I did not advise him.

12 Q I'd like you to direct your attention to the --
13 David Gardner's expense certification which is page 26 of your
14 testimony. I take it from your testimony that upon returning
15 from your vacation you reviewed the Red Lion application and
16 confirmed that the expense figures were those that you had
17 provided. Is that right?

18 A Correct.

19 Q And I take it that in order to make that
20 confirmation you reviewed the expense certification --

21 A Yes.

22 Q -- also? And during that review you didn't see
23 anything in the application or the certification that
24 disclosed to the Commission that an allocation of expenses had
25 been made among the several permits, did you?

1 A No.

2 Q And, point of fact, the expense certification stated
3 that the expenses had been incurred in obtaining the
4 construction permit being assigned? Isn't that right?

5 A Yes, and I think that's accurate.

6 Q But in truth the expenses had been shared among
7 Raystay's five construction permits? Correct?

8 A No. That's not accurate. The certification is
9 accurate, under my allocation and the way that the Red Lion
10 application was the first application I prepared. The others
11 were just copies of the application on the \$5,200 and 50
12 percent of these were the expenses attributable to the Red
13 Lion permit.

14 Q These expenses were specifically attributable to the
15 Red Lion construction permit? Is that your testimony?

16 A Yeah.

17 Q When you reviewed the application and saw that it
18 made no disclosure about an allocation having been made among
19 the construction permits did you discuss that fact with anyone
20 at Raystay?

21 A No.

22 Q Did you discuss that fact with anyone at Cohen &
23 Berfield?

24 A Not that I recall.

25 Q So despite your knowledge that the Red Lion expenses

1 | had been allocated and despite your knowledge that the
2 | disclosure had been made in the integrated case you spoke to
3 | no one about the expense certification that you reviewed?

4 | A No. I reviewed it for its accuracy and I -- it was
5 | accurate.

6 | MR. BECHTEL: I want to object. This is
7 | argumentative.

8 | JUDGE CHACHKIN: He asked another question of a
9 | similar nature. Try to speak up a little bit.

10 | BY MR. HOLT:

11 | Q Your testimony states that after the Red Lion
12 | application was filed you retained for a time the original
13 | tabulation worksheet. Is that correct?

14 | A Correct.

15 | Q And that tabulation had been prepared in conjunction
16 | with the preparation of your November 7, 1991 letter to David
17 | Gardner?

18 | A Yeah.

19 | Q And that is similar, if not identical, to the
20 | tabulation found at page 15 of your testimony? Is that right?

21 | A Correct.

22 | Q How long did you retain that document, the
23 | tabulation worksheet after the Red Lion application was filed?

24 | A Oh, I think I held onto it until we were notified
25 | that the application had been granted and then in the normal

1 | course every few months -- I have work files on my desk. I go
2 | through and clean them out sometime after that.

3 | Q And the purpose for retaining that worksheet was so
4 | that you could explain to the Commission how Raystay had
5 | arrived at the figures in the certification if asked?
6 | Correct?

7 | A Well, no. I think the purpose -- whenever I'm
8 | working on a project and it's still in vain, so to speak, or
9 | hasn't been completed I just keep a little informal manila
10 | folder on my desk with a yellow -- piece of yellow paper in
11 | it. That's what it was.

12 | Q So you didn't retain those materials in order to be
13 | able to provide an explanation to the Commission?

14 | A Well, I had it in mind in the event -- I mean, like
15 | I say, it was there available for it. I'm just saying it's my
16 | general practice when I'm working on a project rather than to
17 | move stuff in and out of the file I just keep an informal
18 | little manila envelope or folder, and this was one piece of
19 | yellow paper. I just keep it there until the matter is
20 | completed.

21 | Q And the matter was completed by the FCC's grant of
22 | the application?

23 | A Yes.

24 | Q And at that time you felt it was okay to discard
25 | those materials?